

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHRISTINE SARACENI,

Plaintiff,

v.

M&T BANK CORPORATION,

Defendant.

19-CV-1152
DECISION & ORDER

On August 27, 2019, the plaintiff, Christine Saraceni, commenced this action against the defendant, M&T Bank Corporation (“M&T”). Docket Item 1. On November 25, 2019, Saraceni moved to dismiss M&T’s counterclaims and to strike M&T’s eighth affirmative defense. Docket Item 65. On December 13, 2019, M&T responded, Docket Item 68, and on December 23, 2019, Saraceni replied, Docket Item 69.

On January 28, 2020, this Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 71. On April 16, 2020, Judge McCarthy issued a Report and Recommendation (“R&R”) finding that Saraceni’s motion should be granted in part and denied in part. Docket Item 79. More specifically, Judge McCarthy recommended that this Court dismiss M&T’s first counterclaim without leave to replead, allow M&T’s second counterclaim to proceed, dismiss M&T’s third counterclaim with leave to replead, and strike M&T’s eighth affirmative defense with leave to replead. *Id.* at 5-6. On June 26, 2020, M&T voluntarily dismissed its first and third counterclaims and its

eighth affirmative defense. See Docket Items 86 and 87. On July 8, 2020, the parties informed the Court that they would not object to the R&R. Docket Item 88.¹

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has carefully reviewed Judge McCarthy's R&R. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to deny Saraceni's motion to dismiss M&T's second counterclaim. In light of M&T's voluntary dismissal of its first and third counterclaims and its eighth affirmative defense, Saraceni's motion to dismiss those counterclaims and to strike that affirmative defense is denied as moot.

For the reasons stated above and in the R&R, Saraceni's motion to dismiss and to strike, Docket Item 65, is DENIED with respect to M&T's second counterclaim and DENIED AS MOOT with respect to M&T's first and third counterclaims and eighth

¹ The parties' deadline to object to the R&R was stayed while they attempted to resolve the case through mediation. Docket Item 81.

affirmative defense. The case is referred back to Judge McCarthy for further proceedings consistent with the referral order of January 28, 2020, Docket Item 71.

SO ORDERED.

Dated: July 20, 2020
Buffalo, New York

/s/ Lawrence J. Vilaro
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE